

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sophia Manuel	Team: Team # 4	CCRB Case #: 201407041	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 07/05/2014 12:15 AM	Location of Incident: 128th Avenue and 235th Street; 105th Precinct stationhouse	Precinct: 105	18 Mo. SOL 1/5/2016	EO SOL 1/5/2016	
Date/Time CV Reported Mon, 07/07/2014 4:22 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/14/2014 3:28 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Paul Chierico	30661	936344	105 PCT
2. POM Michael Whooley	06036	943951	105 PCT
3. An officer			
4. POM Thomas Fitzgerald	15621	944061	105 PCT
5. POM Patrick Cabrera	03395	947992	105 PCT
6. POM Brian Worthington	20109	935990	105 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Paul Dubrosky	00000	930078	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Worthington	Abuse: At 128th Avenue and 235th Street in Queens, PO Brian Worthington stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Thomas Fitzgerald	Abuse: At 128th Avenue and 235th Street in Queens, PO Thomas Fitzgerald stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Michael Whooley	Abuse: At 128th Avenue and 235th Street in Queens, PO Michael Whooley stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.POM Michael Whooley	Abuse: At 128th Avenue and 235th Street in Queens, PO Michael Whooley frisked § 87(2)(b) and § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
E.POM Michael Whooley	Abuse: At 128th Avenue and 235th Street in Queens, PO Michael Whooley searched § 87(2)(b)	
F.POM Brian Worthington	Abuse: At 128th Avenue and 235th Street in Queens, PO Brian Worthington frisked § 87(2)(b)	
G.POM Brian Worthington	Abuse: At 128th Avenue and 235th Street in Queens, PO Brian Worthington searched § 87(2)(b)	
H.POM Michael Whooley	Abuse: At 128th Avenue and 235th Street in Queens, PO Michael Whooley searched the car in which § 87(2)(b) and § 87(2)(b)	
I.POM Thomas Fitzgerald	Abuse: At 128th Avenue and 235th Street in Queens, PO Thomas Fitzgerald searched the car in which § 87(2)(b) and § 87(2)(b)	
J.POM Brian Worthington	Abuse: At 128th Avenue and 235th Street in Queens, PO Brian Worthington searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
K.POM Paul Chierico	Abuse: At 128th Avenue and 235th Street in Queens, PO Paul Chierico damaged § 87(2)(b)'s property.	
L.POM Paul Chierico	Force: At 128th Avenue and 235th Street in Queens, PO Paul Chierico used physical force against § 87(2)(b)	
M.POM Michael Whooley	Force: At 128th Avenue and 235th Street in Queens, PO Michael Whooley used physical force against § 87(2)(b)	
N.POM Patrick Cabrera	Force: At 128th Avenue and 235th Street in Queens, PO Patrick Cabrera used physical force against § 87(2)(b)	
O.POM Thomas Fitzgerald	Force: At 128th Avenue and 235th Street in Queens, PO Thomas Fitzgerald used physical force against § 87(2)(b)	
P.POM Paul Chierico	Discourtesy: At 128th Avenue and 235th Street in Queens, PO Paul Chierico spoke rudely to § 87(2)(b)	
Q.POM Paul Chierico	Abuse: At 128th Avenue and 235th Street in Queens, PO Paul Chierico arrested § 87(2)(b)	
R.POM Paul Chierico	Force: At 128th Avenue and 235th Street in Queens, PO Paul Chierico used physical force against § 87(2)(b)	
S.POM Paul Chierico	Force: At 128th Avenue and 235th Street in Queens, PO Paul Chierico used pepper spray against § 87(2)(b)	
T. An officer	Off. Language: At 128th Avenue and 235th Street in Queens, an officer made remarks to § 87(2)(b) based upon ethnicity.	
U.POM Paul Chierico	Abuse: At the 105th Precinct stationhouse, PO Paul Chierico threatened § 87(2)(b) with the use of force.	
§ 87(2)(g), § 87(4-b)		
§ 87(4-b), § 87(2)(g)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On July 5, 2014, at approximately 12:15 a.m., § 87(2)(b) drove his father's minivan to 128th Avenue and 235th Street in Queens with § 87(2)(b) to pick up § 87(2)(b) and § 87(2)(b) from a party. Officers from the 105th Precinct stopped them, arrested § 87(2)(b) for two counts of disorderly conduct, resisting arrest, and unlawful possession of marijuana, and issued a summons to § 87(2)(b) for possession of a weapon (IAB log encl. 11-12; CCRB complaint encl. 13-16; arrest report encl. 125-127; summons encl. 124). § 87(2)(b) and PO Paul Chierico sustained injuries and went to the hospital. Despite multiple attempts, the investigation was unable to obtain video footage of the incident.

PO Brian Worthington, PO Thomas Fitzgerald, and PO Michael Whooley stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants (**Allegations A-C**). PO Whooley frisked § 87(2)(b) and § 87(2)(b) and searched § 87(2)(b) (**Allegations D and E**). PO Worthington allegedly frisked and searched § 87(2)(b) (**Allegations F and G**). PO Whooley, PO Fitzgerald, and PO Worthington allegedly searched the car (**Allegations H-J**).

While PO Whooley was writing a summons for a knife found on § 87(2)(b) PO Paul Chierico and PO Patrick Cabrera arrived. PO Chierico allegedly grabbed § 87(2)(b)'s cell phone, threw it on the ground, and stomped on it (**Allegation K**). He pulled § 87(2)(b) out of the car, tore his shirt, punched him, and twisted his thumb (**Allegation L**). PO Whooley, PO Cabrera, and PO Fitzgerald also allegedly kicked and punched § 87(2)(b) (**Allegations M-O**). PO Chierico allegedly spoke rudely to § 87(2)(b) (**Allegation P**). PO Chierico arrested § 87(2)(b) (**Allegation Q**). When § 87(2)(b) was seated in the police car, PO Chierico allegedly punched him and used pepper spray against him (**Allegation R and S**). An officer allegedly made offensive remarks (**Allegation T**). While PO Chierico walked § 87(2)(b) from the car to the stationhouse, he allegedly threatened § 87(2)(b) with the use of force (**Allegation U**). § 87(4-b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Mediation, Civil Proceedings, and Criminal Histories

This case is not eligible for mediation. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- PO Brian Worthington has been a member of the service for ten years and has no prior CCRB allegations (encl. 6).
- PO Patrick Cabrera has been a member of the service for five years and there are no substantiated CCRB allegations against him. Allegations of punching were closed as unsubstantiated and victim uncooperative in cases 201202218 and 201301027 (encl. 5).
- PO Thomas Fitzgerald has been a member of the service for seven years. His only prior CCRB allegation, in case 201307968, was for physical force and was exonerated (encl. 4).
- PO Michael Whooley has been a member of the service for seven years and has five prior cases (200818711, 201011835, 201305118, 201307968, and 201401920) in which six physical force allegations and one discourtesy allegation were not substantiated (encl. 3).
- PO Paul Chierico has been a member of the service for nine years and there are no substantiated CCRB allegations against him (encl. 1-2). § 87(2)(g)

§ 87(2)(g)

- In case 201207357, he was accused of a discourteous action, ripping a complainant's pants, and threatening, "He is disabled? I'll show him what disabled is." The case was closed as complainant uncooperative (encl. 212-213).
- In case 201201441, he was accused of beating a complainant who was handcuffed and seated in the back of a police car. PO Chierico allegedly tore the complainant's shirt, and damaged the complainant's cell phone by ripping out the memory card. The physical force allegation was unfounded and the property damage allegation was unsubstantiated (encl. 210-211).
- In case 201016081, he was accused of striking a complainant with his hand, radio, and car door, as well as throwing the complainant's cell phone to the ground, and threatening him, "Don't say a fucking word or I'm going to fucking kill you in the back here." The allegations were closed as complainant uncooperative (encl. 208-209).
- In case 200514825, PO Chierico was accused of threatening, "I'll stomp the fuck out of you." The case was closed as complaint withdrawn (encl. 203).
- In case 200514807, PO Chierico was accused of punching a complainant, speaking rudely to her, slamming a door on her, threatening to knock her off her bicycle, and grabbing her cell phone and throwing it on the ground. The punch allegation was exonerated, and the door slam allegation was unsubstantiated. The discourtesy allegation was unfounded. § 87(2)(g)

- § 87(2)(g)

Civilian Statements

Complainants/Victims

§ 87(2)(b) (encl. 17-40)

- § 87(2)(b) is a § 87(2)(b). He had a plastic bag of marijuana in his boxers at the time of the incident, but the car did not smell like marijuana. He did not smoke marijuana in his father's car.
- PO Whooley approached § 87(2)(b)'s parked car on foot and said, "It smells like marijuana. Have you been smoking?" When § 87(2)(b) said no, PO Whooley asked if there was contraband in the car. § 87(2)(b) said no. PO Whooley took § 87(2)(b)'s identification and asked him to exit the car. § 87(2)(b) complied. PO Whooley frisked and searched him, removing his wallet, phone, and keys. PO Whooley returned all items except the identification.
- An officer, who § 87(2)(b) thought was PO Whooley, had § 87(2)(b) and § 87(2)(b) exit the car. That officer searched them and removed their wallets and keys.
- PO Whooley and PO Worthington searched the car. PO Fitzgerald did not.
- While an officer wrote a summons for § 87(2)(b)'s knife, the four men were allowed to sit in the car. PO Chierico arrived with PO Cabrera. He approached § 87(2)(b) who was holding his cell phone by the open window. PO Chierico told § 87(2)(b) to give him the phone. § 87(2)(b)

§ 87(2)(b) refused. PO Chierico reached for it, but § 87(2)(b) pulled away. PO Chierico grabbed § 87(2)(b)'s shirt with one hand, while he grabbed the phone with the other and threw it on the ground. He stomped on the phone. § 87(2)(b) never saw it again. (IAB is currently investigating the missing property.)

- PO Chierico tried to pull § 87(2)(b) out of the window by his shirt. He then unlocked the door, pulled him out of the open door, and pushed him against the car, slamming his head.
- § 87(2)(b) was physically compliant when PO Chierico pulled his arms behind his back, but PO Chierico threw him to the ground face first, causing a scratch to his forehead. PO Chierico, PO Cabrera, PO Fitzgerald, and an officer identified by the investigation as PO Whooley kicked and punched § 87(2)(b)'s head, neck, back, and stomach as they handcuffed him. PO Chierico also twisted his thumb painfully. § 87(2)(b) allowed the officers to handcuff him, but he screamed in pain. PO Chierico shouted, "You fucked up. You're going down for assault. Fucking retard."
- § 87(2)(b) denied grabbing PO Chierico's hand.
- § 87(2)(b) complied as PO Chierico placed him in the police car. PO Chierico punched § 87(2)(b)'s chest three times and closed the door. PO Chierico sat in the driver's seat and PO Cabrera sat next to § 87(2)(b). PO Chierico said, "You fucking asshole. You fucked with the wrong one tonight. I'm taking you down for assaulting an officer. You really fucked up," and then pepper-sprayed him.
- As PO Chierico walked § 87(2)(b) alone to the stationhouse from the police car, he said "When you step inside this precinct and when you go to court, I swear to God if you say anything, I will stab you in the fucking face."
- At the stationhouse, § 87(2)(b) told Lt. Dubrosky that PO Chierico pepper-sprayed him. As instructed by Lt. Dubrosky, PO Chierico washed § 87(2)(b)'s face. He searched § 87(2)(b) and § 87(2)(b) said he had marijuana in his boxers and removed it for PO Chierico.
- § 87(2)(b)'s arrest photo depicts a scrape to the top of his forehead. It also shows that his shirt is ripped (encl. 41). He provided 50 photos to the CCRB of his ripped shirt and scrapes and bruises to his elbow, knees, knuckles, shoulder, and the center of his back, his shoulder, and the top and side of his head. His thumb appears to be swollen (relevant photos encl. 21-39).
- § 87(2)(b)'s medical records from § 87(2)(b) Hospital on § 87(2)(b), also note contusions and abrasions on top of his scalp and over his chest and knees. He told medical personnel that he was assaulted by police (encl. Privileged Folder).
- On July 6, 2014, § 87(2)(b)'s mother, § 87(2)(b), purchased an iPhone for mobile number § 87(2)(b), which is § 87(2)(b)'s phone number (receipt and bill encl. 39a-d). § 87(2)(b) stated that this purchase replaced the phone that PO Chierico damaged and did not return to him.

§ 87(2)(b) (encl. 42-47)

- § 87(2)(b) is a § 87(2)(b) black male. He sat in the front passenger's seat of § 87(2)(b)'s father's minivan.
- § 87(2)(b) corroborated § 87(2)(b)'s testimony that the car did not smell like marijuana and no one smoked. He corroborated § 87(2)(b)'s testimony that PO Whooley approached § 87(2)(b) asked about marijuana, and told him to exit the car.
- § 87(2)(b) said that PO Worthington approached him and asked him to exit the car. PO Worthington patted down the outside of his clothes and asked if he had contraband. § 87(2)(b) said he had a pocket knife in his front jacket pocket. It was a folding knife with a 3.5 inch blade and a wooden handle, which he used at his summer job. PO Worthington removed the knife from § 87(2)(b)'s pocket and then put his hands in the rest of § 87(2)(b)'s

- pockets. He obtained § 87(2)(b)'s identification.
- § 87(2)(b) and § 87(2)(b) exited the car, but § 87(2)(b) did not see what happened to them before they were brought to the back of the car, where § 87(2)(b) was standing.
 - § 87(2)(b) corroborated § 87(2)(b)'s testimony that PO Whooley searched the car. He did not allege that PO Worthington or PO Fitzgerald searched the car.
 - § 87(2)(b) corroborated § 87(2)(b)'s testimony that PO Chierico demanded § 87(2)(b)'s cell phone and attempted to grab it when § 87(2)(b) refused. He corroborated that PO Chierico pulled § 87(2)(b) by his shirt partway out of the window and grabbed the cell phone, threw it to the ground, and stomped on it.
 - PO Chierico pulled § 87(2)(b) out of the open door, pushed him against the car, and threw him to the ground. § 87(2)(b) did not see § 87(2)(b) grab PO Chierico's hand.
 - § 87(2)(b) was screaming on the ground, but § 87(2)(b) could not see what was happening. He could not see what happened when § 87(2)(b) was placed in the police car.
 - PO Worthington gave § 87(2)(b) a summons. Officers spoke together. An officer, who § 87(2)(b) could not see, said, "Those Guyanese kids. Those motherfuckers are the worst."

§ 87(2)(b) (encl. 59-72)

- § 87(2)(b) is a § 87(2)(b). After exiting the party, he sat behind § 87(2)(b) in § 87(2)(b)'s car. When asked if they smoked marijuana in the car, he shrugged and said, "I have no idea." When asked if he smelled or saw marijuana in the car, he shook his head no, but did not answer verbally.
- PO Whooley patted down the chests, pants, and pockets of § 87(2)(b) and § 87(2)(b). He did not search them. He did not feel § 87(2)(b)'s waistband.
- § 87(2)(b) corroborated § 87(2)(b)'s testimony that PO Worthington frisked § 87(2)(b) and put his hand in § 87(2)(b)'s pocket to remove a knife.
- § 87(2)(b) corroborated § 87(2)(b)'s allegation that PO Worthington searched the car, but said that no other officer searched the car.
- § 87(2)(b) corroborated § 87(2)(b) and § 87(2)(b)'s testimony that PO Chierico demanded § 87(2)(b)'s cell phone and that § 87(2)(b) refused to give it to him. He corroborated that PO Chierico grabbed § 87(2)(b) and tried to pull him out of the car, while also grabbing the phone and throwing it to the ground. § 87(2)(b) said a second officer helped PO Chierico pull § 87(2)(b) out of the car. § 87(2)(b) did not grab PO Chierico's hand.
- The officers slammed § 87(2)(b) against the car and took him to the ground. § 87(2)(b) could not see what happened on the ground, but heard § 87(2)(b) yell, "What are you doing with my hand? Get your leg off my head." § 87(2)(b) accused officers of punching his face.
- § 87(2)(b) was looking away when officers placed § 87(2)(b) in the police car.
- He did not recall officers making ethnic remarks or pepper-spraying anyone.

§ 87(2)(b) (encl. 58)

- § 87(2)(b) is § 87(2)(b)'s friend. He did not cooperate in providing a sworn statement.
- After exiting the party, § 87(2)(b) sat in the car behind § 87(2)(b).
- In § 87(2)(b)'s phone statement, he corroborated that the car did not smell like marijuana. He said there was no marijuana in the car.
- A white male officer with an average build, identified by the investigation as PO Whooley, frisked all four occupants of the car. § 87(2)(b) did not see him search anyone.
- § 87(2)(b) corroborated the other victims' testimonies that PO Chierico demanded § 87(2)(b)'s phone and § 87(2)(b) refused. He corroborated that PO Chierico grabbed the phone

and threw it to the ground, and grabbed § 87(2)(b) and pulled him out of the car. He slammed § 87(2)(b) on the side of the car. Several officers helped PO Chierico take § 87(2)(b) to the ground, though § 87(2)(b) was compliant.

- PO Chierico hit and slapped § 87(2)(b)'s head. He did not know whether other officers also hit § 87(2)(b) was not doing anything with his body. Officers were not saying anything to § 87(2)(b) who was asking, "Why are you doing this?"

Witnesses

§ 87(2)(b) (encl. 48-52)

- § 87(2)(b) lives at the intersection where the incident occurred. She observed it while standing in front of her house.
- § 87(2)(b) saw § 87(2)(b) and his friends walk from the party to his minivan, which was parked in front of her house. She did not smell marijuana.
- She corroborated the civilian testimonies that two officers, who she could not describe but who were identified by the investigation as PO Whooley and PO Worthington, had the males exit the car and then frisked each of them. She alleged that the officers also put their hands in the males' pockets. She did not see officers remove any objects from their pockets, except for the lining of the pockets.
- § 87(2)(b) said that PO Whooley and PO Worthington opened the car doors and shined their flashlights inside.
- § 87(2)(b) corroborated civilian testimony that after the males were seated back in the car, an officer, identified by the investigation as PO Chierico, pulled § 87(2)(b) out of the car by his shirt. She did not see what prompted PO Chierico to do that.
- § 87(2)(b) denied seeing an officer take a cell phone or stomp on something.
- § 87(2)(b) alleged that PO Chierico told § 87(2)(b) to "Shut the fuck up." She said that § 87(2)(b) did not resist PO Chierico pulling his arms behind his back, but that there was then a struggle, which she could not describe. PO Chierico tripped § 87(2)(b) to the ground, where approximately seven officers handcuffed him. All seven officers hit and kicked § 87(2)(b)'s head, back, and side. One officer put a knee on § 87(2)(b)'s neck. § 87(2)(b) complained, and the officers said, "Shut the fuck up."
- After § 87(2)(b) was placed in the police car, § 87(2)(b) saw the car shake, but she could not see what was happening.
- She could not hear officers' conversation after § 87(2)(b) was arrested.

§ 87(2)(b) (encl. 53-57)

- § 87(2)(b) is § 87(2)(b)'s mother and lives with her at the intersection where the incident occurred. § 87(2)(b) observed the incident through the window of her house.
- § 87(2)(b) saw officers approach the minivan and have the males exit.
- She walked away from the window and did not see what happened next.
- When she returned to the window, she saw PO Chierico pull § 87(2)(b) out of the car. She did not know why PO Chierico did this.
- § 87(2)(b) walked away from the window again and did not see the rest of the incident.

§ 87(2)(b) (encl. 73)

- § 87(2)(b) is § 87(2)(b)'s daughter. She was § 87(2)(b) old at the time of the incident and did not provide a sworn statement. She observed the incident through the window.
- § 87(2)(b) said that four officers frisked the four males and then allowed them to sit in their car. All officers were white, except for a black male officer who sat in the police car and did

not frisk anyone.

- A white male officer, identified by the investigation as PO Whooley, searched the front seat and glove compartment of § 87(2)(b)'s car.
- One officer, identified by the investigation as PO Chierico, removed § 87(2)(b) from the car and threw him to the ground. § 87(2)(b) did not grab PO Chierico's hand.
- While officers handcuffed § 87(2)(b) on the ground, a uniformed white male officer with blonde, spikey hair and an average height and build who may be PO Whooley, stepped on § 87(2)(b)'s neck. Other officers, who she could not describe, hit and kicked his back.
- § 87(2)(b) did not see anything unusual happen when § 87(2)(b) was placed in the police car.

§ 87(2)(b) (encl. 74)

- § 87(2)(b) is § 87(2)(b)'s friend. He observed the incident while standing in front of her house. He did not cooperate in providing a sworn statement to the CCRB.
- He said that white, male, uniformed officers had the four males exit the car. Two officers searched the car, opening all doors except for the trunk. Officers frisked the four males.
- § 87(2)(b) said that one officer handcuffed § 87(2)(b) and searched his pockets, then removed the handcuffs and told the four males to sit in their car.
- Additional units arrived. For no apparent reason, an officer, identified by the investigation as PO Chierico, pulled § 87(2)(b) out of the car and dropped him on the ground. One officer held down § 87(2)(b)'s legs while PO Chierico placed a knee on § 87(2)(b)'s head. A third officer handcuffed him. They ripped § 87(2)(b)'s shirt. § 87(2)(b) did not see an officer hit § 87(2)(b) yelled.
- An officer said to § 87(2)(b) "You Caribbean people." Another officer said, "Every time we come here, these black kids got something to do."

NYPD Statements

Subject Officer: PO BRIAN WORTHINGTON (encl. 105-110)

- PO Worthington was interviewed at the CCRB on November 13, 2014.
- He provided the following factors that led to the initial stop:
 - PO Worthington and his partners, PO Whooley and PO Fitzgerald, responded to a call about shots fired. He did not recall details of the call.
 - They arrived to find many people and officers near a party that had ended.
 - As they passed § 87(2)(b)'s minivan at the corner, PO Worthington smelled marijuana smoke. The police car windows were down and the car was five feet from the minivan. He believed the smell came from the minivan.
 - PO Worthington and his partners decided to approach the minivan to see if it contained marijuana and to ask its occupants about the shots fired.
 - There was nothing about the minivan or its occupants that made officers suspect they were involved in a shooting.
 - PO Worthington approached the front passenger side, where he still smelled marijuana. He asked the occupants to exit for his safety. They complied.
- PO Worthington, PO Fitzgerald, and PO Whooley frisked all four occupants for weapons. PO Worthington frisked the pockets, waistband, and legs of only one person, but he did not recall which person. He did not feel any bulges. He denied putting his hands in this person's pockets. He did not see PO Fitzgerald or PO Whooley put their hands in anyone's pockets.
- PO Worthington knew that a knife was found, but he did not know how or by whom. He did not find the knife. The person he frisked did not have a knife.
- PO Worthington denied searching the minivan. He did not recall if other officers searched it.

- While PO Whooley wrote a summons for the knife, PO Chierico and PO Cabrera arrived. PO Worthington walked down the block. When he returned, § 87(2)(b) was on the ground in handcuffs. PO Worthington denied hearing officers use profanity or hearing § 87(2)(b) shouting. He did not see a cell phone.
- § 87(2)(b) resisted being placed in the police car, but officers did not punch or mace him.
- PO Worthington did not make any racial or discourteous statements or hear any officer do so.

Subject Officer: PO MICHAEL WHOOLEY (encl. 75-82)

- PO Whooley was interviewed at the CCRB on September 25, 2014. He wrote on § 87(2)(b)'s summons that § 87(2)(b) held a knife in his right hand in public view (encl. 124).
- PO Whooley corroborated PO Worthington's testimony that officers were responding to a call about shots fired and approached § 87(2)(b)'s minivan to investigate the shots. He did not know why they decided to approach the occupants of the minivan as opposed to other people in the area. He smelled marijuana only after he exited the police car and approached the minivan on foot. He believed the smell came from the minivan.
- § 87(2)(b) exited the minivan. PO Whooley assumed he did so because an officer told the occupants of the minivan to step out, but he did not recall which officer did so or why.
- He did not recall frisking or searching anyone. He did not know if other officers did so.
- At some point, PO Whooley saw a gravity knife in plain view. He did not recall where or when he saw it. He did not remove the knife from § 87(2)(b)'s pocket. He knew it was a gravity knife because of the way it opened, but he did not recall how he knew it opened this way. He did not know whether he or anyone vouchered it.
- While PO Whooley wrote the summons in the police car, he noticed PO Cabrera and PO Chierico struggling to arrest § 87(2)(b) who was standing outside the minivan and waving his arms around. He did not see PO Chierico remove § 87(2)(b) from the car. He did not see anything for which § 87(2)(b) could have been arrested. Somehow, officers took § 87(2)(b) to the ground, where they tried to handcuff him. § 87(2)(b) held his arms under his body. PO Whooley helped them handcuff him, but he did not recall how he helped. He denied hitting, punching, or kicking § 87(2)(b). He denied seeing another officer do so. He denied seeing an officer twist § 87(2)(b)'s thumb or hearing an officer use profanity or offensive language.
- PO Whooley did not recall seeing officers place § 87(2)(b) in the police car. He did not see PO Chierico punch or mace § 87(2)(b).
- PO Whooley thought § 87(2)(b)'s injuries could have resulted from resisting arrest.

Subject Officer: PO THOMAS FITZGERALD (encl. 93-99)

- PO Fitzgerald was interviewed at the CCRB on October 8, 2014.
- He testified that he and his partners stopped § 87(2)(b)'s minivan to investigate a gun run, though there was nothing suspicious about the minivan or its occupants. He did not recall smelling marijuana at any point. He did not recall anyone talking about marijuana.
- PO Fitzgerald approached the driver's side of the minivan. Because it was a gun run and for no other reason, he frisked one person for weapons. He did not feel any bulges and did not search this person. He did not recall where this person had been seated in the minivan. He only frisked one person. He did not know if the other occupants were frisked or searched.
- PO Fitzgerald searched the center console, door pocket, and floor around the driver's seat of the minivan for weapons. He did not see another officer search the minivan. He had no reason to suspect the minivan contained weapons besides the radio call.
- One officer found a knife, but PO Fitzgerald did not know who or how. PO Fitzgerald and PO

Whooley returned to the police car to check for warrants.

- § 87(2)(b) threw something out of the minivan window. PO Fitzgerald requested his identification to check for warrants and possibly write a summons for littering. While he was running the warrant check, he saw § 87(2)(b) and PO Chierico scuffling. He did not know how it began. Somehow, they went to the ground. PO Fitzgerald helped PO Chierico and other officers handcuff § 87(2)(b) pulled his arms away and locked them under his body. PO Fitzgerald did not punch, hit, or kick § 87(2)(b). He did not see any officer do so. He did not recall PO Chierico or any officer using profanity.
- PO Fitzgerald did not see PO Chierico mace or punch § 87(2)(b) in the police car. He did not hear any officer make ethnic remarks. He did not do so. He did not see a cell phone.

Subject Officer: PO PAUL CHIERICO (encl. 83-92)

- PO Chierico was interviewed at the CCRB on October 14 and December 12, 2014. He prepared § 87(2)(b)'s arrest report, property clerk invoice, and supporting depositions (encl. 115-116; 125-132). He went Line of Duty as a result of the incident (encl. 117).
- PO Chierico approached § 87(2)(b) because he noticed § 87(2)(b) reaching under the seat and moving up and down. Because he could not see if § 87(2)(b) was reaching for a weapon, he instructed § 87(2)(b) to sit back and stop bending under the seat and moving around. § 87(2)(b) continued moving around. PO Chierico approached the open window and again told § 87(2)(b) to stop. § 87(2)(b) then swatted towards PO Chierico's face, not making contact. PO Chierico grabbed § 87(2)(b)'s hand. § 87(2)(b) grabbed PO Chierico's hand and squeezed hard, causing pain. § 87(2)(b) pulled PO Chierico's arm into the car and said, "Get the fuck out of here." PO Chierico struggled with § 87(2)(b) and tried to pull him out of the car to arrest him for disorderly conduct. § 87(2)(b) was disorderly because he grabbed PO Chierico's arm. PO Chierico pulled him out of the car, but he did not recall how. § 87(2)(b) screamed and continued squeezing PO Chierico's hand. Because of this screaming, which continued throughout the apprehension, and the crowd that formed in response to the screaming, PO Chierico added an additional disorderly conduct charge.
- Once out of the car, § 87(2)(b) twisted his body and pulled his arms away from PO Chierico. PO Chierico did not hit § 87(2)(b)'s head against the minivan. In the struggle to pull § 87(2)(b)'s arms behind his back, PO Chierico and § 87(2)(b) fell to the ground.
- Other officers, identified by the investigation as PO Whooley, PO Fitzgerald, and PO Cabrera, helped PO Chierico handcuff § 87(2)(b) on the ground. PO Chierico denied hitting, punching, or kicking § 87(2)(b) or seeing another officer do so. § 87(2)(b) was screaming, kicking, and pulling his arms away from officers and under his body.
- PO Chierico did not use profanity.
- He denied seeing a cell phone, taking a phone from § 87(2)(b) throwing a phone on the ground, or stomping on a phone.
- After § 87(2)(b) was handcuffed, he said he had marijuana. PO Chierico frisked and searched him for weapons and drugs incident to the arrest. He found marijuana in the front right jeans pocket. PO Chierico had smelled marijuana during the incident.
- § 87(2)(b) was compliant as PO Chierico and PO Cabrera sat him in the police car. PO Chierico denied punching or pepper-spraying him.
- PO Chierico denied making offensive remarks or hearing other officers do so. He denied threatening § 87(2)(b) with the use of force. He denied having a discussion with Lt. Dubrosky about pepper-spray or washing § 87(2)(b)'s face.
- PO Chierico went Line of Duty because his hand was in pain as a result of either § 87(2)(b) squeezing it or falling to the ground with § 87(2)(b). PO Chierico went to § 87(2)(b) Hospital, where he was diagnosed with a "bad sprain/strain."

- PO Chierico thought the scrapes on § 87(2)(b) and the ripped shirt occurred when he fell to the ground and resisted arrest.
- PO Chierico explained in his CCRB interview and in the supporting depositions that the disorderly conduct: fighting charge was for § 87(2)(b) swatting at PO Chierico's face and grabbing his hand. The disorderly conduct: unreasonable noise charge was for § 87(2)(b) screaming during the arrest, causing a crowd to emerge.

Subject Officer: PO PATRICK CABRERA (encl. 100-104)

- PO Cabrera was interviewed at the CCRB on October 23, 2014.
- He did not see PO Chierico's initial interaction with § 87(2)(b) or what prompted the interaction because he was moving the police car.
- When PO Cabrera looked up, officers were removing § 87(2)(b) from the minivan. The officers tried to handcuff him, but he swung his arms away. PO Cabrera joined the officers. § 87(2)(b) and officers fell to the ground in the struggle. On the ground, § 87(2)(b) pulled his arms away from officers and under his body. PO Cabrera helped officers place him in handcuffs. PO Cabrera did not kick, hit, or punch § 87(2)(b). He did not see any officer do so. He did not hear any officer use profanity.
- PO Cabrera did not recall smelling marijuana at any point.
- He never saw PO Chierico throw a cell phone on the ground. He did not see a cell phone.
- Many people were present because of a party, but a crowd never formed around the officers.
- PO Cabrera did not recall § 87(2)(b) screaming or making unreasonable noise.
- § 87(2)(b) resisted being placed in the police car by pulling away. No physical force was used. PO Chierico did not punch or mace him.
- PO Cabrera did not hear any officer make any offensive remarks.
- PO Cabrera thought § 87(2)(b)'s injuries occurred when he struggled against officers.
- PO Cabrera did not see whatever caused PO Chierico to go Line of Duty.

Witness Officer: LT PAUL DUBROSKY (encl. 111-114)

- Lt. Dubrosky was interviewed at the CCRB on November 7, 2014. He was a sergeant at the time of the incident.
- He was working at the desk when § 87(2)(b) was brought into the stationhouse, but he did not recall interacting with § 87(2)(b) or seeing any injury or sign of pepper spray. He did not recall asking PO Chierico about pepper spray or telling PO Chierico to wash § 87(2)(b)'s eyes. He acknowledged writing, "cut to head," in § 87(2)(b)'s entry in the command log because it was his handwriting, but he did not recall writing that.

Findings and Recommendations

Allegations Not Pleaded

PO Fitzgerald testified that he frisked someone. Because no civilian alleged PO Fitzgerald frisked him, the frisk allegation is not pleaded against PO Fitzgerald.

Explanation of Subject Officer Identification

- § 87(2)(b) alleged that the bald white male officer frisked and searched him and searched the car. He also alleged that the bald white male officer searched § 87(2)(b) and § 87(2)(b). § 87(2)(b) said that the white male driver of the police car frisked him, § 87(2)(b) and § 87(2)(b) but did not search them. According to PO Worthington, PO Whooley was driving the police car. PO Whooley is a white male and was partially bald at the time of his CCRB

- interview. Allegations D, E, and H are pleaded against PO Whooley.
- § 87(2)(b) alleged that the black male officer frisked and searched him. § 87(2)(b) and § 87(2)(b) alleged that the black male officer searched the car. PO Worthington was the only black officer involved in the incident. Allegations F, G, and J are pleaded against him.
 - Because PO Fitzgerald acknowledged searching § 87(2)(b)'s minivan, Allegation I is pleaded against him.
 - § 87(2)(b) alleged that while he was being handcuffed, several officers punched and kicked him. PO Whooley, PO Cabrera, and PO Fitzgerald acknowledged helping PO Chierico handcuff § 87(2)(b). PO Worthington said he was down the block during the apprehension. No civilian said the black male officer was involved. Allegations L, M, N, and O are, therefore, pleaded against PO Chierico, PO Whooley, PO Cabrera, and PO Fitzgerald.
 - Because PO Chierico was the arresting officer and acknowledged making the decision to arrest § 87(2)(b), Allegation Q is pleaded against him. § 87(2)(b) alleged that PO Chierico used pepper spray against him and punched him in the police car. Allegations R and S are also pleaded against PO Chierico.
 - § 87(2)(b) and § 87(2)(b) alleged that an officer who they could not or did not describe spoke offensively. No officer acknowledged saying or hearing offensive remarks. No other civilians heard such remarks. The investigation was, therefore, unable to determine which officer allegedly spoke offensively. Allegation T is pleaded against an officer.

Allegation A – At 128th Avenue and 235th Street in Queens, PO Brian Worthington stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B – At 128th Avenue and 235th Street in Queens, PO Thomas Fitzgerald stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation C – At 128th Avenue and 235th Street in Queens, PO Michael Whooley stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation D – At 128th Avenue and 235th Street in Queens, PO Michael Whooley frisked § 87(2)(b) and § 87(2)(b)

Allegation E – At 128th Avenue and 235th Street in Queens, PO Michael Whooley searched § 87(2)(b)

Allegation F – At 128th Avenue and 235th Street in Queens, PO Brian Worthington frisked § 87(2)(b)

Allegation G – At 128th Avenue and 235th Street in Queens, PO Brian Worthington searched § 87(2)(b)

Allegation H – At 128th Avenue and 235th Street in Queens, PO Michael Whooley searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation I - At 128th Avenue and 235th Street in Queens, PO Thomas Fitzgerald searched the car in which § 87(2)(b) and § 87(2)(b)

Allegation J – At 128th Avenue and 235th Street in Queens, PO Brian Worthington searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that PO Fitzgerald, PO Whooley, and PO Worthington stopped the minivan. The circumstances leading to the stop and the actions during the stop are in dispute.

All four occupants of the minivan stated that officers approached them and asked about marijuana. When the occupants denied having marijuana, the officers asked them to exit the car.

force against § 87(2)(b)

Allegation M – At 128th Avenue and 235th Street in Queens, PO Michael Whooley used physical force against § 87(2)(b)

Allegation N – At 128th Avenue and 235th Street in Queens, PO Patrick Cabrera used physical force against § 87(2)(b)

Allegation O – At 128th Avenue and 235th Street in Queens, PO Thomas Fitzgerald used physical force against § 87(2)(b)

Whether officers used physical force against § 87(2)(b) is in dispute.

§ 87(2)(b) alleged that when he refused to give PO Chierico his cell phone, PO Chierico tried to pull him out of the car by his shirt. PO Chierico then opened the door, pulled § 87(2)(b) out, and pushed against the car. Despite § 87(2)(b)'s compliance with putting his arms behind his back, PO Chierico took him to the ground, causing a scratch to his forehead. On the ground, PO Chierico, PO Cabrera, PO Fitzgerald, and PO Whooley kicked and punched § 87(2)(b)'s head, neck, back, and stomach as they handcuffed him. PO Chierico also twisted § 87(2)(b)'s thumb. § 87(2)(b) was physically compliant with being handcuffed, but screamed in pain. § 87(2)(b) denied ever grabbing PO Chierico's hand.

§ 87(2)(b) and § 87(2)(b) corroborated § 87(2)(b)'s allegation that PO Chierico pulled § 87(2)(b) out and pushed him against the car, before taking him to the ground, even though § 87(2)(b) did not appear to resist being handcuffed. § 87(2)(b) and § 87(2)(b) denied seeing § 87(2)(b) grab PO Chierico's hand. Because of their positions in the minivan, § 87(2)(b) and § 87(2)(b) could not see what officers did to § 87(2)(b) on the ground, though they heard § 87(2)(b) screaming that he was being hurt. § 87(2)(b) saw PO Chierico hit and slap § 87(2)(b)'s head. He did not know whether other officers did anything to § 87(2)(b).

§ 87(2)(b) corroborated § 87(2)(b)'s allegation that, despite his compliance with putting his arms behind his back, all officers involved in apprehending him hit and kicked his head, back, and side. § 87(2)(b) also alleged that an officer put a knee on § 87(2)(b)'s neck. § 87(2)(b) said that only one officer hit and kicked § 87(2)(b). § 87(2)(b) did not see officers kick or hit § 87(2)(b) but said that PO Chierico put his knee on § 87(2)(b)'s head.

PO Chierico said he pulled § 87(2)(b) out of the car to arrest him for swatting at his face and squeezing his arm. PO Chierico did not recall how he removed § 87(2)(b) from the car. Once he was out of the car, § 87(2)(b) pulled his arms away from PO Chierico. In the struggle to handcuff him, they both fell to the ground on their stomachs. PO Whooley, PO Cabrera, and PO Fitzgerald acknowledged helping PO Chierico handcuff § 87(2)(b) on the ground. They each said that § 87(2)(b) resisted by pulling his arms away from officers, but they denied hitting, punching, or kicking § 87(2)(b) or seeing any other officer do so. PO Chierico said that § 87(2)(b) also kicked. The officers thought § 87(2)(b)'s injuries occurred when he fell to the ground and when he moved his body around on the ground as he resisted arrest.

§ 87(2)(b) sustained a number of superficial injuries, which are documented in his arrest photo, personal photos, and medical records (encl. 41; 21-39; Privileged Folder). He sustained scrapes and bruises to the top of his forehead, the crown and side of his head, the center of his back, and his elbow, knees, knuckles, and shoulder. His thumb may also be swollen, but it is unclear because his other hand was not photographed for comparison. PO Chierico's Line of Duty paperwork said PO Chierico sustained a sprain/strain to his hand, but PO Chierico refused to sign the HIPAA form (LOD encl. 117).

Patrol Guide Procedure 203-11 says that officers must use minimum necessary force to overcome resistance and effect an arrest (encl. F-G).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation P – At 128th Avenue and 235th Street in Queens, PO Paul Chierico spoke rudely to § 87(2)(b)

Whether PO Chierico spoke rudely to § 87(2)(b) is in dispute. § 87(2)(b) alleged that as officers were apprehending him, PO Chierico said, “You fucked up. You’re going down for assault. Fucking retard.” § 87(2)(b) alleged that in the police car with PO Cabrera, PO Chierico said, “You fucking asshole. You fucked with the wrong one tonight. I’m taking you down for assaulting an officer. You really fucked up.”

PO Chierico denied ever using profanity towards § 87(2)(b)

PO Whooley and PO Cabrera did not hear PO Chierico use profanity towards § 87(2)(b). PO Fitzgerald did not recall hearing PO Chierico use profanity. § 87(2)(b) did not allege that PO Chierico used profanity. § 87(2)(b) did not recall whether PO Chierico used profanity. § 87(2)(b) alleged that PO Chierico said, “Give me your fucking phone,” which § 87(2)(b) did not allege. § 87(2)(b) said officers did not say anything during § 87(2)(b)’s apprehension. § 87(2)(b) testified that PO Chierico and other officers told § 87(2)(b) to “shut the fuck up,” which § 87(2)(b) did not allege. § 87(2)(b) and § 87(2)(b) did not say that any officer used profanity. PO Worthington and § 87(2)(b) were not present for § 87(2)(b)’s apprehension. § 87(2)(b) PO Whooley, PO Chierico, § 87(2)(b) and § 87(2)(b) each testified that § 87(2)(b) was yelling throughout his apprehension.

§ 87(2)(b), § 87(2)(g)

Allegation Q – At 128th Avenue and 235th Street in Queens, PO Paul Chierico arrested § 87(2)(b)

PO Chierico arrested § 87(2)(b) for resisting arrest, unlawful possession of marijuana, disorderly conduct: fighting/violent behavior, and disorderly conduct: unreasonable noise. Whether PO Chierico had a legal basis to arrest § 87(2)(b) is in dispute (encl. 125-127).

The charge in question is disorderly conduct: fighting/violent behavior, because PO Chierico stated that this infraction was the reason he initiated the arrest. PO Chierico said that the rest of the infractions (resisting arrest, screaming, and being found to possess marijuana) occurred during or after the apprehension.

PO Chierico said that he decided to arrest § 87(2)(b) for disorderly conduct at the moment when § 87(2)(b) grabbed PO Chierico’s arm, which was holding onto § 87(2)(b)’s other arm, which § 87(2)(b) had just swatted towards PO Chierico’s face. According to PO Chierico, § 87(2)(b) swatting towards PO Chierico’s face and grabbing his arm constituted disorderly

conduct: fighting/violent behavior. After deciding to arrest § 87(2)(b) PO Chierico pulled him out of the car, at which point § 87(2)(b) began to scream and attract a crowd.

No civilian or witness corroborates PO Chierico's version of the events leading to pulling § 87(2)(b) out of the car. Rather, § 87(2)(b) and § 87(2)(b) corroborate § 87(2)(b)'s testimony that the altercation between PO Chierico and § 87(2)(b) consisted of PO Chierico demanding § 87(2)(b)'s cell phone and then grabbing it, throwing it on the ground, and pulling § 87(2)(b) out of the car. § 87(2)(b) denied grabbing PO Chierico's hand, and no civilian or officer saw § 87(2)(b) grab PO Chierico's hand.

The officers and remaining witnesses denied seeing what prompted PO Chierico to pull § 87(2)(b) out of the car.

The disorderly conduct statute applies only to conduct which incites or risks inciting a breach of the peace and in situations that go beyond individual disputants and become a public concern. People v. Square, 20 Misc. 3d 1126A (Crim. Ct. New York City 2008) (encl. H-K).

According to People v. Gerard, 94 A.D.3d 592 (2012) (encl. L-M), an individual is entitled to engage in an "immediate, spontaneous and proportionate" reaction to an illegal seizure that is not based on reasonable suspicion.

§ 87(2)(b), § 87(2)(g)

Allegation R – At 128th Avenue and 235th Street in Queens, PO Paul Chierico used physical force against § 87(2)(b)

Allegation S – At 128th Avenue and 235th Street in Queens, PO Paul Chierico used pepper spray against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) testified that after he was handcuffed, PO Chierico placed him in the back of a police car. § 87(2)(b) was compliant and did not say anything, but PO Chierico punched his chest three times. PO Cabrera then sat next to § 87(2)(b) while PO Chierico sat in the driver seat. PO Chierico spoke rudely to § 87(2)(b) who replied, "If you feel like I offended you in any way, I apologize." PO Chierico then turned around and pepper-sprayed § 87(2)(b) coughed and spit. PO Cabrera lowered the window. When they got to the stationhouse, the desk officer, Lt. Dubrosky, asked PO Chierico if § 87(2)(b) was maced. PO Chierico did not respond, but § 87(2)(b) said that he was. Lt. Dubrosky told PO Chierico to wash § 87(2)(b)'s face off, and PO Chierico eventually complied.

Some civilians and officers saw PO Chierico place § 87(2)(b) in the police car, but no civilian or officer saw PO Chierico punch or mace § 87(2)(b) in the police car. Only § 87(2)(b) said she saw the car shake once § 87(2)(b) was placed inside. PO Chierico denied macing or punching § 87(2)(b). PO Cabrera denied feeling the effects of mace in the police car. Lt. Dubrosky did not recall seeing any indication that § 87(2)(b) had been maced, asking if he had been maced, or instructing PO Chierico to wash § 87(2)(b)'s face. Pepper spray is not noted in § 87(2)(b)'s arrest report. The effects of pepper spray are not noted in the command log or § 87(2)(b).

§ 87(2)(b) s medical records. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation T – At 128th Avenue and 235th Street in Queens, an officer made remarks to § 87(2)(b) based upon ethnicity.

§ 87(2)(b) alleged that an officer, who he could not see, said, “Those Guyanese kids, those motherfuckers are the worst.” Similarly, § 87(2)(b) alleged that an officer said to § 87(2)(b) “You Caribbean people,” and that another officer said in general, “Every time we come here, these black kids got something to do.” § 87(2)(b) did not describe these officers and did not cooperate in providing a sworn statement.

§ 87(2)(b), § 87(2)(g)

Allegation U – At the 105th Precinct stationhouse, PO Paul Chierico threatened § 87(2)(b) with the use of force.

§ 87(2)(b) alleged after PO Chierico removed him from the police car at the stationhouse, PO Chierico said, “When you step inside this precinct and when you go to court, I swear to God if you say anything, I will stab you in the fucking face.” § 87(2)(b) said that no one would have heard this statement because PO Cabrera was already in the stationhouse.

PO Chierico denied making this statement or threatening § 87(2)(b) with the use of force. PO Chierico has been accused of threatening civilians with the use of force in four other CCRB cases. The case most similar to this incident was 201016081, in which he allegedly said to a complainant, “Don’t say a fucking word or I’m going to fucking kill you in the back here,” after allegedly using excessive physical force against the complainant. PO Chierico was accused of saying, “He is disabled? I’ll show him what disabled is,” in case 201207357, and, “I’ll stomp the fuck out of you,” in case 200514825. In case 200514807, he was accused of threatening to knock a complainant off her bicycle. While none of these allegations were substantiated, they represent a pattern of threats of force by PO Chierico (encl. 203-213).

§ 87(2)(b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(2)
b)

§ 87(2)(g), § 87(4-b)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date